



**DEPARTMENT OF
FINANCE**
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.PDF.CA.GOV

October 1, 2009

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

The Department of Finance has reviewed the test claim submitted by the City of Newport Beach (claimant) for Claim No. 05-TC-05, "Mandate Reimbursement Process II." The claimant refers to the California Code of Regulations (CCR) and the Government Code (GC) in their assertion that the following activities impose a reimbursable state mandate:

1. Provide additional information on test claims. – 2 CCR Section 1183
2. Provide specific information regarding actual and estimated costs, statewide cost estimates, identify offsetting funds, and describe duties to be performed. – GC Section 17553(b)
3. Participate in the Reasonable Reimbursement Methodology (RRM) process.
– GC Section 17557(f)
4. File claims in accordance with claiming instructions. – GC Section 17564

Finance believes that the test claim legislation and regulations do not impose a reimbursable state mandated program on local government within the meaning of California Constitution because the activities claimed to be new, were actually required under regulations contained in the CCR that was operative in 2003. The version of the regulation operative as of September 6, 2005, and the test claim statutes simply restate those same requirements.

The claimant alleges that providing more detailed information with the test claim and filing claims for direct and indirect costs creates a new program or higher level of service to be provided; however, prior regulations already required detailed information to be included with the test claim. Similarly, the test claim statutes do not specifically require that this detailed information be obtained through interviews, research, witness preparation, or by means of conferences as argued by the test claimant. The only new information required that was not included in the prior regulations is the statewide cost estimate. This activity alone does not amount to a new program or higher level of service.

Specific information is necessary to determine whether there is a new program or a higher level of service. Specific information is also needed to identify if costs have been incurred and whether any of the exceptions listed in statute apply to deny a test claim. The test claim statutes clarify that this information should be submitted with the initial test claim filing.

Ms. Paula Higashi
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The claimant also alleges that the test claim statutes require participation in the RRM process; however, the statutes only require that the Commission consult with affected agencies to consider the benefit of an RRM that balances accuracy with simplicity. It does not require any agency's participation. Any state or local agency may abstain from participating in the RRM process without severe penalties.

The final activity plead by the claimant, filing reimbursement claims pursuant to claiming instructions, is not new. Claiming instructions existed prior to the test claim statutes and have always provided the manner in which reimbursement claims were submitted.

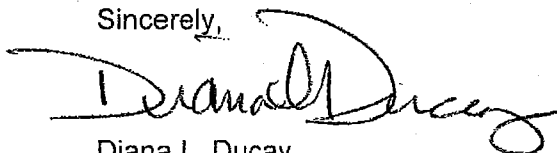
Additionally, the information identified in the test claim statutes and previously required in regulations is necessary for the implementation of Proposition 4, enacted by the voters in November 1979. Proposition 4 requires the state to provide a subvention of funds to reimburse local government for the cost of the new program or increased level of service required by the Legislature. Implicit in the phrases, "to provide a subvention of funds" and "to reimburse", is the directive that the state make payment to local government in the correct amount – no more and no less than the amount necessary to subvene or reimburse – and only when legally required. Therefore, under GC Section 17556 (f) the test claim regulations and statutes, which ensure test claims are accurate and complete when submitted, are necessary for the implementation of Proposition 4 and are not reimbursable.

Finance concludes that the activities plead under the specified sections do not impose a reimbursable state mandate on local government and that the test claim should be denied because the test claim regulations and statutes do not impose a new program or higher level of service. Additionally, Finance asserts that the statutes and regulations are necessary to implement a voter approved ballot measure.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your July 2, 2009 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

A handwritten signature in black ink, appearing to read "Diana L. Ducay", with a stylized flourish at the end.

Diana L. Ducay
Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF CARLA CASTAÑEDA
DEPARTMENT OF FINANCE
CLAIM NO. CSM-05-TC-05

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true. As to the enclosures included with this filing, I certify they are authentic copies downloaded from the websites of Westlaw (www.westlaw.com).

October 1, 2009

at Sacramento, CA

Carla Castañeda

Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Mandate Reimbursement Process II.
Test Claim Number: CSM-05-TC-05

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On Oct. 1, 2009, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

Mr. Allan Burdick
MAXIMUS
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

Mr. Glen Everroad
City of Newport Beach
3300 Newport Boulevard
PO Box 1768
Newport Beach, CA 92659-1768

B-08
Ms. Ginny Brummels
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

A-15
Ms. Jesse McGuinn
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Leonard Kaye, Esquire
County of Los Angeles
Auditor-Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012

B-29
Ms. Marianne O'Malley
Legislative Analyst's Office
925 L Street, Suite 1000
Sacramento, CA 95814

Mr. Robert Miyashiro
School Services of California, Inc.
1121 L Street, Suite 1060
Sacramento, CA 95814

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Boulevard, #307
Sacramento, CA 95842

Proof of Service
October 1, 2009
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Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Ms. Alexandra Condon
California Teacher's Association
6 Red River Court
Sacramento, CA 95831-3036

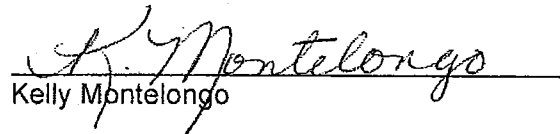
Mr. Arthur Palkowitz
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Mr. Steve Smith
Steve Smith Enterprises, Inc.
4633 Whitney Avenue, Suite A
Sacramento, CA 95821

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on Oct. 1, 2009 at Sacramento, California.


Kelly Montelongo

Westlaw.

2 CA ADC § 1183
 2 CCR s 1183
 Cal. Admin. Code tit. 2, s 1183

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**BARCLAYS OFFICIAL CALIFORNIA CODE OF
 REGULATIONS
 TITLE 2. ADMINISTRATION
 DIVISION 2. FINANCIAL OPERATIONS
 CHAPTER 2.5. COMMISSION ON STATE MAN-
 DATES
 ARTICLE 3. TEST CLAIMS**

This database is current through 12/26/2003, Register
 2003, No. 52.

s 1183. Test Claim Filing.

(a) A local agency or school district shall file a "test claim" with the commission to obtain a mandate determination. The test claim shall be filed not later than three (3) years following the effective date of the statute or executive order alleged to impose a mandate, or in the case of statutes or executive orders that became effective before January 1, 2002, the test claim shall be filed on or before September 30, 2003. The test claim filed first with the commission shall be deemed the first test claim. The claimant may amend a test claim at any time prior to a commission hearing on the claim without affecting the original filing date as long as the amendment substantially relates to the test claim as it was originally filed.

(b) Any test claim filed with the commission must involve alleged mandated costs that exceed one thousand dollars (\$1,000). A county superintendent of schools or a county that is the fiscal agent for multiple districts may submit a combined claim on behalf of school districts, direct service districts, or special districts if the combined claim exceeds one thousand dollars (\$1,000). Commission staff shall return all test claims filed with the commission for less than one thousand dollars (\$1,000) to the claimant.

(c) All test claims, or amendments thereto, shall be filed on a form provided by the commission.

(d) All test claims or amendments thereto shall contain at least the following elements and documents:

(1) A copy of the statute or executive order alleged to

impose a mandate. The specific sections of the chaptered bill or executive order alleged to impose a mandate must be identified.

(2) A copy of relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate, and a copy of administrative decisions and court decisions that may impact the alleged mandate. The specific chapters, articles, sections, or page numbers must be identified. Published court decisions arising from a state mandate determination by the Board of Control or the commission are exempt from the requirements of this subsection.

(3) A written narrative that includes a detailed description of:

(A) The activities required under prior law or executive order, and

(B) The new program or higher level of service required under the statute or executive order alleged to impose a mandate, and

(C) The increased costs mandated by the state as defined in Government Code sections 17514 and 17556.

(4) If the narrative describing an alleged mandate involves more than discussion of statutes, regulations, or legal argument and utilizes assertions or representations of fact, such assertions or representations must be supported by documentary evidence and shall be submitted with the test claim. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge or information or belief.

(5) A statement that actual and/or estimated costs resulting from the alleged mandate exceed one thousand dollars (\$1,000).

(6) A test claim, or amendment thereto, shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the

declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief. The date signed, the declarant's title, address, telephone number, and, if available, electronic mail address and facsimile number, shall be included.

(e) The claimant shall file one original test claim, or amendment thereto, and accompanying documents with the commission. The original shall be unbound and single-sided, without tabs, and include a table of contents.

(f) The claimant shall also file seven (7) copies of the test claim, or amendment thereto, and accompanying documents with the commission. The copies may be two-sided and shall not include tabs.

(g) Within ten (10) days of receipt of a test claim, or amendment thereto, commission staff shall notify the claimant if the test claim is complete or incomplete and send a copy of these regulations unless a correct copy was previously provided. Test claims will be considered incomplete if any of the elements required in subsections (c), (d), (e), or (f) of this section are illegible or are not included. If a complete test claim is not received within thirty (30) calendar days from the date the incomplete test claim was returned, the executive director may disallow the original test claim filing date. A new test claim(s) may be accepted on the same statute or executive order alleged to impose a mandate.

(h) Test claims may be prepared as a joint effort between two or more claimants and filed with the commission if the claimants attest to all of the following in the test claim filing:

(1) The claimants allege state-mandated costs result from the same statute or executive order;

(2) The claimants agree on all issues of the test claim; and,

(3) The claimants have designated one contact person to act as the resource for information regarding the test claim.

(i) More than one test claim on the same statute or executive order may be filed with the commission.

utive order may be filed with the commission.

(1) The executive director shall accept more than one test claim on the same statute or executive order under the following circumstances:

(A) Each test claim is filed by a different type of claimant or each test claim presents issues that require separate representation, and

(B) The test claim is filed with the commission within sixty (60) days from the date the first test claim was filed.

(C) The test claim includes:

1. The content and filing requirements of a test claim, as described in section 1183, subdivisions (b) through (f); and

2. A narrative detailing the reasons why the first test claim filing will not result in a complete and fair consideration of the test claim.

(2) Within ten (10) days of receipt of an additional test claim filing on the same statute or executive order, commission staff shall notify the claimant if the test claim is complete or incomplete. The test claim will be considered incomplete if any of the elements required in subsection (i)(1) of this section are illegible or not included, and it shall be returned to the claimant. The claimant shall have ten (10) days from the date the incomplete test claim was returned to submit a complete test claim.

(3) Claimants may designate a single claimant as the lead claimant. If the commission does not receive notice from the claimants designating a lead claimant within 90 days from the date the first test claim was filed, the executive director shall designate the claimant who filed the first test claim as the lead claimant. The lead claimant shall be the single contact for information regarding the test claim.

(4) When the executive director accepts more than one test claim under this subdivision, the executive director shall consolidate part or all of the test claims within 90

2 CA ADC § 1183
2 CCR s 1183
Cal. Admin. Code tit. 2, s 1183

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days of the date the original test claim was filed, pursuant to section 1183.06 of these regulations.

Tables>

(j) Any party may appeal to the commission for review of the actions and decisions of the executive director under this section pursuant to section 1181 of these regulations.

Note: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections 17521, 17551, 17553, 17555 and 17564, Government Code.

<General Materials (GM) - References, Annotations, or

HISTORY

1. New subsection (f) and amendment of Notefiled 4-29-87; operative 5-29-87 (Register 87, No. 18).

2. Amendment of section and Notefiled 7-23-96; operative 7-23-96. Submitted to OAL for printing only (Register 96, No. 30).

3. Amendment filed 9-13-99; operative 9-13-99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).

4. Amendment of section and Notefiled 4-21-2003; operative 4-21-2003. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2003, No. 17).

2 CA ADC s 1183
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2 CA ADC § 1183

2 CCR s 1183

Cal. Admin. Code tit. 2, s 1183

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**BARCLAYS OFFICIAL CALIFORNIA CODE OF
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DATES****ARTICLE 3. TEST CLAIMS**

This database is current through 12/30/2005, Register
2005, No. 52.

s 1183. Test Claim Filing.

(a) A local agency or school district shall file a test claim with the commission to obtain a mandate determination.

(b) Any test claim filed with the commission must allege increased costs as a result of the statute or executive order that exceed the amount set in Government Code section 17564.

(c) Any test claim or amendment filed with the commission must be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later. For purposes of this subsection, "within 12 months" means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.

(d) All test claims, or amendments thereto, shall be filed on a form developed by the executive director and shall contain all of the elements and supplemental documents required by the form and statute.

(e) The claimant shall file one original test claim, or amendment thereto, and accompanying documents with the commission. The original shall be unbound and single-sided, without tabs, and include a table of contents.

(f) The claimant shall also file seven (7) copies of the test claim, or amendment thereto, and accompanying documents with the commission. The copies may be double-sided and shall not include tabs.

(g) Within ten (10) days of receipt of a test claim, or

amendment thereto, commission staff shall notify the claimant if the test claim is complete or incomplete and send a copy of these regulations unless a correct copy was previously provided. Test claims will be considered incomplete if any of the elements required in subsections (d), (e), or (f) of this Section are illegible or are not included. If a complete test claim is not received within thirty (30) calendar days from the date the incomplete test claim was returned, the executive director may disallow the original test claim filing date. A new test claim(s) may be accepted on the same statute or executive order alleged to impose a mandate.

(h) Test claims may be prepared as a joint effort between two or more claimants and filed with the commission if the claimants attest to all of the following in the test claim filing:

(1) The claimants allege state-mandated costs result from the same statute or executive order;

(2) The claimants agree on all issues of the test claim; and,

(3) The claimants have designated one contact person to act as the resource for information regarding the test claim.

(i) Any test claim, or portion of a test claim, that the commission lacks jurisdiction to hear for any reason may be dismissed by the executive director with a written notice stating the reason for dismissal.

(j) Any party may appeal to the commission for review of the actions and decisions of the executive director under this Section pursuant to Section 1181 of these regulations.

<General Materials (GM) - References, Annotations, or
Tables>

Note: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections 17521, 17530, 17551, 17553, 17557(e) and 17564, Government Code.

HISTORY

1. New subsection (f) and amendment of Notefiled 4-29-87; operative 5-29-87 (Register 87, No. 18).
2. Amendment of section and Notefiled 7-23-96; operative 7-23-96. Submitted to OAL for printing only (Register 96, No. 30).
3. Amendment filed 9-13-99; operative 9-13-99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
4. Amendment of section and Notefiled 4-21-2003; operative 4-21-2003. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2003, No. 17).
5. Amendment of section and Note filed 9-6-2005; operative 9-6-2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

2 CA ADC s 1183
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